



6C-2002-030  
II-A-107

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 30

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

CERTIFIED MAIL #  
RETURN RECEIPT REQUESTED

C.T. Corporation System  
Registered Agent for  
The Industrial Company  
50 W. Broadway 8th Floor  
Salt Lake City, UT 84101-2006

Re: Notice of Violations AED/MSEB #4743

Dear Agent:

On March 12, 1997, inspectors of the U.S. Environmental Protection Agency inspected The Industrial Company (TIC) facility at the Kennecott Mine, Magna, Utah for compliance with section 211 of the Clean Air Act (Act), 42 U.S.C. § 7545, and the regulations issued thereunder (40 C.F.R. Part 80). This law prohibits any person from dispensing diesel fuel with a sulfur content that is in excess of 0.05 percent by weight into motor vehicles. TIC is a person as defined by section 302(e) of the Act, 42 U.S.C. § 7602(e) and is a wholesale purchaser-consumer of diesel fuel as defined by 40 C.F.R. § 80.2(o). The law subjects violators to a civil penalty of not more than the sum of \$25,000 for every day of such violation in addition to the amount of economic benefit or savings resulting from the violation.

As a result of the inspection of the TIC facility, the inspectors determined that diesel fuel containing in excess of 0.05 weight percent sulfur and that was dyed red (as is required for high sulfur diesel), was dispensed into three (3) motor vehicles, as follows: 1981 Kenworth tractor trailer cab, VIN 1XKWD29X5BC192015; 1996 International dump truck VIN 1HTGGAET8VH433659; 1996 International dump truck VIN 1HTGGAET5SH686563. This constitutes three (3) apparent violations of 40 C.F.R. § 80.29. TIC or its employees or agents operated these vehicles at all relevant times and TIC was a wholesale purchaser-consumer of the diesel fuel that was introduced into the vehicles by TIC or its employees or agents, and is therefore liable for the three (3) apparent violations



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pursuant to 40 C.F.R. § 80.30 and section 211(g)(2) of the Act,  
42 U.S.C. § 7545(g)(2).

The Administrator of the Environmental Protection Agency has authority to mitigate the statutory penalty of \$25,000 per violation per day established by the Clean Air Act. After consideration of the gravity of the violations, the apparent size of your business, and your history of compliance with the Fuels Regulations, we propose to reduce the statutory penalty for the violations alleged in this Notice to Three Thousand dollars (\$3,000). This initial reduced penalty may be adjusted further depending on the particular circumstances of this case and provided that you show that you have corrected the violations and the conditions which caused the violations.

The Environmental Protection Agency encourages settlement of such matters rather than initiating litigation. The settlement process provides substantial flexibility for reducing the statutory penalty, particularly if the alleged violations are corrected promptly. If we cannot settle this matter within 90 days, our normal procedure is to prepare cases like this for trial either by referral to the United States Department of Justice with a recommendation to file a civil complaint in federal district court or by the filing of an administrative complaint. The amount of civil penalty sought in the complaint will increase substantially. If we are unable to agree to terms within this time frame, the settlement terms acceptable to the Environmental Protection Agency thereafter will increase.

The EPA official designated below has been assigned to this case. Please contact him regarding this Notice of Violations.

Ervin Pickell, Attorney/Advisor  
U.S. Environmental Protection Agency  
Western Field Office  
12345 W. Alameda Parkway  
Suite 214  
Denver, CO 80228  
(303) 969-6485

If you wish to pursue settlement of this matter we will make every effort to reach an equitable settlement.

Sincerely yours,

*Bruce C. Buckheit*

Bruce C. Buckheit, Director  
Air Enforcement Division  
Office of Enforcement and Compliance